REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

FAMILY DIVISION

PROBATE & ADMINISTRATION CAUSE 805 of 1994

IN THE MATTER OF THE ESTATE OF MONICA WAMAITHA KIHARA (DECEASED)

TERESIAH WANJIKU NJOROGE ..... APPLICANT

VERSUS

IRENE WAMBUI KIMANI ..... RESPONDENT

RULING

1. The dust of the Deceased herein settled over 3 decades ago. The contest for her earthly property, however, continues to rage with an unbridled ferocity. This legal battle has pitted relative against relative in a manner that has now bled across four decades, consuming judicial time and familial goodwill in equal measure.

2. This succession cause is itself a child of an even older and more foundational dispute, Succession Cause No. 40 of 1985, which pertains to the estate of James Kihara Njoroge, the patriarch from whom the assets in this cause flow. Together, these files represent a tangled web of grievances and legal manoeuvres that has ensnared two generations of the Kihara family.

3. In the face of such a protracted and acrimonious history, the duty of this Court is not only to dispense justice but to guard the judicial process itself. It must ensure that its processes are not used as a tool for perpetual litigation, to seek finality where it can be found, and to uphold the constitutional

mandate that justice, though long delayed in this family, is not ultimately denied or procedurally derailed.

4. It is against this sober background that the Court must now adjudicate the Application presently before it. The Application comes hot on the heels of viva voce hearing of the Protest dated 30 August 2021 to the confirmation of Grant.

5. On the eve of judgement, the Applicant filed Summons dated 28 February 2025 seeking the following orders:
   (i) Spent
   (ii) An order be and is hereby issued arresting the judgement scheduled on 24 April 2025 pending the hearing and determination of the Revocation of Grant in Succession Cause No. 40 of 1985; In the estate of James Kihara Njoroge;
   (iii) An order be and is hereby issued appointing Teresiah Wanjiku Njoroge as an administrator following the passing of Caroline Wambui Kihara;
   (iv) Costs of this Application be in the cause.

6. The Application is premised on the grounds on the face of it and supported by an Affidavit sworn by the Applicant. The Applicant avers that she is the widow of John Njoroge Kihara (Deceased) who was a son to the Deceased herein. It is the Applicant's contention that there is a new development in Succession Cause No. 40 of 1985, from which all the properties in the present case emanate. According to the Applicant, there is a consent dated 16 December 2024 filed in Succession Cause No 40 of 1985, which is yet to be adopted by the Court. Copies of the alleged application and consent are attached to the Application herein.

7. The Applicant's core legal argument is that if the Court proceeds to deliver its judgement on the confirmation of Grant herein, it will be in futility and risks

creating conflicting decisions that will embarrass the Court, since the very assets being distributed may be affected by the outcome in Succession Cause No 40 of 1985. Separately, the Applicant grounds her prayer to be appointed as an Administrator on the unfortunate fact that one of the current Administrators, Caroline Wambui Kihara, has since passed away.

8. The Application is vehemently opposed by the Respondent/Administrator as well as Dorcas Wairimu Kamau. The Respondent frames the application as an 11th hour motion and a deliberate delay tactic, filed in bad faith on the eve of judgment. She argues that the Application is a text book case of abuse of court process and flies in the face of the oxygen principle. The Respondent states that there is no pending application for revocation of Grant in succession Cause No 40 of 1985. She further asserts that the issues concerning the assets in this estate are, in fact, settled relying on a settled position and decision of the Court of 24 October 2019, which has never been set aside.

9. Dorcas Wairimu Kamau provides dispositive evidence that goes to the heart of the Applicant's motion. With respect to Succession Cause No 40 of 1985, she avers that the Summons for Revocation dated 17 April 2024 was formally withdrawn, as evidenced by the attached Notice of Withdrawal dated 30 April 2025. Further, the consent letter was never adopted as an order of the Court, since the Applicant herself opposed the said consent.

10. The Application was argued orally, during which submissions, the positions crystallized.

Analysis & Determination

11. This Court has carefully considered the application, the rival Affidavits with their annexures, and the oral submissions of all counsel. The issues for determination are, in this Court's view, threefold:
    (i) Whether the Applicant has established a *prima facie* case to warrant the arrest of this Court's judgment, specifically in relation to the status of Succession Cause No. 40 of 1985;
    (ii) Whether the Applicant's prayer for appointment as an administrator is merited in law;
    (iii) Whether this application, in its totality, constitutes an abuse of the court process

12. The Applicant’s entire case for arresting the judgement rests on the claim of a live, parallel proceeding in Succession Cause No 40 of 1985 that could lead to conflicting orders. This is, in theory, a sound legal principle: s court should not proceed in a manner that embarrasses it or a court of concurrent jurisdiction. However, this principle is only applicable if the alleged matter is, in fact, pending. The Applicant’s case, upon inspection of the evidence, is not weak, it is built on sand. The Notice of Withdrawal provided by the Respondents makes the danger or risk that the Applicant relies upon an impossibility.

13. Furthermore, the Court notes a profound and troubling contradiction in the Applicant’s own evidence. In her Affidavit herein, the Applicant presents the consent ("MWN2") as a live and potent document that necessitates a stay of judgment. However, her annexture "MWN1" is a Notice of Motion in Cause 40/1985 where she, Teresia Wanjiku Njoroge, is the one seeking to revoke that very consent, averring that it is in bad faith and a well calculated move to have the two as the new administrators. The Applicant is, therefore, speaking from both sides of the mouth. In one file she argues the consent is invalid and must be revoked. In this file, she argues that the consent is so

potent and live that it must halt a judgement. This is a duplicitous and disingenuous use of court process.

14. Finally, the attempt by the Applicant's counsel to salvage the motion by relying on the consent alone is futile. As is trite law, a consent letter filed by parties has zero legal force until and unless it is adopted and recorded as an order of the court. The evidence from Dorcas Wairimu Kamau, which is not rebutted, is that the consent was never adopted, precisely because the Applicant herself opposed it. Therefore, the Applicant's primary ground for arresting the judgment is not just weak; it is factually and legally non-existent. It has evaporated.

15. The Applicant's second prayer is that she be appointed as an Administrator following the death of Caroline Wambui Kihara. This prayer is not just unmerited, it is an affront to the established record of this Court. The Respondent annexed the Ruling of the Hon. Lady Justice Ali-Aroni, delivered herein on 24 October 2019. This Court has read that comprehensive ruling. In it, the learned Judge made a specific, binding, and devastating finding against the current Applicant. At paragraph 22 of the Ruling, the Court found:

"*Further, having annulled and revoked the grant, I am of the opinion that from the conduct of the 2nd Respondent she is not fit to administer the estate. I also find the 2nd Respondent does not rank priority to the Applicants and I decline to appoint her as an administrator*."

16. This is not a new issue. It is a matter that is *res judicata.* More precisely, the doctrine of issue estoppel applies. This Court has already adjudicated the specific question of Teresia Wanjiku Njoroge's fitness to administer the estate

and found her unfit. That finding, never having been appealed, stands. The Applicant cannot, years later, simply file a new application to re-litigate a matter that has been conclusively determined against her. If the Applicant was aggrieved with the 2019 finding, her remedy was to appeal, not to wait for a co-administrator to pass away and then attempt to sneak in the back door by re-applying. This prayer is, therefore, summarily dismissed.

17. This brings me to the overarching character of this Application. Is it a genuine, if misguided, legal effort? Or is it an abuse of process? In ***Muchanga Investments Limited v Safaris Unlimited (Africa) Limited & 2 others [2001] KECA 242 (KLR),*** the Court of Appeal described an abuse of process as involving proceedings that are false, vexatious or oppressive.

18. Article 159(2)(b) of The Constitution commands that justice shall not be delayed. This is not merely a judicial aspiration; it is a binding principle and a right of the litigants who seek finality.

19. This Court finds that this Application is a textbook case of abuse of process for the following reasons:
    (i) It has been filed on the eve of judgment in a matter that has been litigated to finality.
    (ii) Its entire basis, the revocation application in Succession Cause No 40 of 1985, has been withdrawn, a fact that renders the Application's premise a material falsehood;
    (iii) It includes a prayer that the Applicant knows has been conclusively denied by a prior, un-appealed ruling of this Court, making it an impermissible attempt to re-litigate.
    (iv) The Applicant's own evidence is internally contradictory, attacking a consent on one file while relying on its as a threat in another.

20. This application is not just unmerited. It is a frivolous, vexatious, and calculated abuse of this Court's process. It is a delay tactic designed to frustrate the Respondent and prevent the conclusion of a case that has been in the court system for over 30 years. This is precisely the kind of conduct that Article 159(2)(b) of The Constitution was enacted to prevent.

21. The late-stage attack on the Respondent's capacity to swear her Affidavit, raised by the Applicant's counsel, is noted and dismissed as an irrelevant and desperate distraction from the Applicant's own lack of a case on the merits.

22. For the reasons stated above, this Court finds the Applicant's Summons dated 28 February 2025 to be wholly without merit, based on a misrepresentation of facts, and a manifest abuse of the judicial process. This Court cannot allow its process to be held hostage by litigants who, having failed to persuade the court on the merits, seek to win by delay and obfuscation. The Application is dismissed with costs to the Respondents.

DATED AND DELIVERED AT NAIROBI THIS 14 DAY OF NOVEMBER 2025

HELENE R. NAMISI
JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Applicant:	Mr. Irungu
For Respondents/Admins:	Ms. Muthee h/b Kirimi
For 1st Respondent:	Mr. Keiro h/b Kamotho
Court Assistant:	Lucy Mwangi